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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,755	02/14/2001	Michael R. Miller	QOD1P021	2167

7590 08/25/2004

Mr. William Fritz  
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EXAMINER
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NGUYEN, NGA B

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/783,755

Applicant(s)

MILLER ET AL.

Examiner

Nga B. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 10 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This Office Action is the answer to the communication filed on February 14, 2001, which paper has been placed of record in the file.
2. Claims 1-18 are pending in this application.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-12 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter, particularly, an abstract idea.

The claims, as presently claimed and best understood were reconsidered in light of the "Examination Guidelines for Computer-Related Inventions" and were found to be non-statutory. Discussion of the analysis of the claims under the guidelines follows.

Claims 1-12 merely manipulate an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

As to claims 1-6, the claimed invention is not implemented on a specific apparatus; therefore, the invention is not directed to the technological arts. To be statutory, the utility of an invention must be within the technological arts. The definition

of "technology" is the "application of science and engineering to the development of machines and procedures in order to enhance or improve human conditions, or at least to improve human efficiency in some respect." (Computer Dictionary 384 (Microsoft Press, 2d ed. 1994)). When one looks to the present specification to determine what the applicant has invented, the invention appears to be a series of steps performed on a computer. It is clear that claims 1-6 are intended to be directed to the abstract method apart from the apparatus for performing the method.

As to claims 7-12, the claimed invention is implemented as functional descriptive material *per se* or computer program *per se*. Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized.

Therefore, claims 1-12 are non-statutory, because they are directed solely to an abstract idea without practical application in the technological arts.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3-5, 7, 9-11, 13, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojha et al (hereinafter Ojha), U.S. Patent No. 6,598,026.

Regarding to claims 1, 7, 13, Ojha discloses a method, computer program product, and system for allowing bidding on products, comprising the steps of:

(a) generating a summary of user demand for a product based on user input of product information (column 9, lines 19-35; figures 3-7; the buyer submits product criteria to the system);

(b) presenting the summary to a plurality of sellers of the product (column 9, lines 36-40; the system searches the product database from a plurality of sellers);

(c) receiving bids from the sellers for a price of the product (column 9, lines 40-45; figures 3-7; each entry in the product list includes a product price from the sellers);

(d) selecting the lowest bid (column 9, lines 45-55; the price shown fro each entry is the lowest list price for the product from among the sellers); and

(e) presenting the bid to a reseller of the product (figures 3-7; displaying the product list to the buyer, it is obvious and inherit that the buyer may become a reseller).

Regarding to claims 3, 9, 15, Ojha discloses wherein the user input product information includes a survey relating to the product, wherein the survey is completed online (column 10, lines 30-43; receiving product or merchant ratings of from the buyer).

Regarding to claims 4, 10, 16, Ojha discloses wherein steps (a)-(e) are performed in real time (column 9, lines 35-55).

Regarding to claims 5, 11, 17, Ojha discloses wherein the bid is presented to a user (figures 3-7).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 6, 8, 12, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojha et al (hereinafter Ojha), U.S. Patent No. 6,598,026, in view of Cragun et al (hereinafter Cragun), U.S. Patent No. 5,804,803.

Regarding to claims 2, 8, 14, Ojha does not disclose wherein the user input includes representations of bar codes, wherein the bar codes are associated with particular products. However, Cragun discloses wherein the user input includes representations of bar codes, wherein the bar codes are associated with particular products (column 8, lines 5-30; the user scans the UPC of a product). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Ojha's to include the feature above for the purpose of avoiding the time-consuming hassle of performing multiple keywords searches on the global

computer network to uncover the desired collection of product specific information on a trial and error and/or step-by-step basis.

Regarding to claims 6, 12, 18, Ojha does not disclose wherein the summary includes at least one of a geographic profile and a demographic profile of the users inputting the product information. However, Cragun discloses wherein the summary includes at least one of a geographic profile and a demographic profile of the users inputting the product information (figure 4, column 10, lines 25-43). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Ojha's to include the feature above for the purpose of enhancing information delivery about products to the buyers based on the preferences and needs of the buyers.

### ***Conclusion***

9. Claims 1-18 are rejected.
10. The prior arts made of record and not relied upon is considered pertinent to applicant's disclosure:

Rothschild (US 6,430,554) discloses an interactive search system using a search identifying barcode to rapidly and effectively obtain a supply of related information for presentation to a user.

Call (US 5,913,210) discloses an Internet system for delivering information about products fro the source of those products.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (703) 306-2901. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on (703) 308-0505.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-1113.

12. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

C/o Technology Center 3600

Washington, DC 20231

Or faxed to:

(703) 872-9326 (for formal communication intended for entry),

or

(703) 308-3691 (for informal or draft communication, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, Seventh Floor (Receptionist).



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Nga B. Nguyen

*Nga Nguyen*

August 11, 2004